

Staff Summary Report



Council Meeting Date: 11/13/03

Agenda Item Number: 24

SUBJECT: RESOLUTION 2003.73 APPROVING THE BLOCK 12 DEVELOPMENT AND DISPOSITION AGREEMENT BETWEEN THE CITY OF TEMPE AND COLLEGE BLOCK, LLC.

DOCUMENT NAME: 20031113dsnc01 ASU/LDS BLOCK AT 6th AND COLLEGE (0403-02-14)

SUPPORTING DOCS: No

COMMENTS: Request Council approval of a Development and Disposition Agreement between the City of Tempe and College Block LLC for the construction of a mixed-use project on Block 12 in Downtown Tempe.

PREPARED BY: Neil Calfee, Principal Planner (480) 350-2912

REVIEWED BY: Melanie Hobden, Development Services Manager (480) 350-8069

LEGAL REVIEW BY: Cliff Mattice, Assistant City Attorney (480) 350-8610

FISCAL NOTE: The City has no direct financial obligation in this agreement. The City will be required to abandon the east-west alley between 6th and 7th Streets.

RECOMMENDATION: Approve Resolution 2003.73 as submitted.

ADDITIONAL INFO: On September 21, 2000 the City Council approved Resolution 2000.62 approving the selection of United Properties as prime developer for Block 12, a 3 acre site in Downtown that is bordered by Sixth Street, Seventh Street, College Avenue and Forrest Avenue. A large-scale, residential and retail mixed use project is planned for the site, including approximately 300 housing units in a variety of configurations.

This agreement does not contain any direct financial participation by the City, it calls for the abandonment of our alley that bisects the site and the construction of underground parking below the 6th and 7th Streets rights of way.

RESOLUTION NO. 2003.73

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE
AUTHORIZING THE MAYOR TO EXECUTE A REDEVELOPMENT
AGREEMENT WITH COLLEGE BLOCK LLC FOR THE DEVELOPMENT OF
BLOCK 12 IN DOWNTOWN TEMPE.**

WHEREAS, on September 9, 2000 the Tempe City Council approved Resolution 2000.62 selecting United Properties Inc. as prime developer for Block 12 in Downtown Tempe; and

WHEREAS, The City and the Master Developer understand and acknowledge that this Agreement is also authorized by and entered into in accordance with the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of the City; and

WHEREAS, the City of Tempe desires to obtain those public benefits that will accrue from the development of this Project;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND
COUNCIL OF THE CITY OF TEMPE, ARIZONA, AS FOLLOWS:**

That the Mayor is authorized to execute the Block 12 Development and Disposition Agreement and all documents related thereto, copies of which are on file with the City Clerk's office.

PASSED AND ADOPTED by the Mayor and Council of the City of Tempe, Arizona, on _____, 2003.

Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe
31 E. Fifth Street
Tempe, Arizona 85281
Attn: City Clerk

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the ____ day of _____, 2003, by and between the CITY OF TEMPE, an Arizona municipal corporation (the “**City**”), and COLLEGE BLOCK, LLC, an Arizona limited liability company (the “**Developer**”).

RECITALS

A. WHEREAS, The City is authorized to enter into this Development Agreement pursuant to A.R.S. § 9-500.05;

B. WHEREAS, The City and Developer intend that this Agreement apply to and affect only that property legally described in **Exhibit A** attached hereto and made a part hereof, and defined in this Agreement as the “**Property**”, consisting of: (a) one (1) parcel (“alley right-of-way”) currently owned by the City and referred to herein as the “**City Property**”, (b) twelve (12) parcels currently owned by the Arizona Board of Regents and referred to herein as the “**ASU Property**”, and (c) eight (8) parcels currently owned by third parties and referred to herein as the “**Private Property**”;

C. WHEREAS, The City promulgated a Request for Proposals (“**RFP**”), dated February 18, 2000, for the redevelopment of the Property, as located at the southwest corner of College Avenue and Sixth Street in downtown Tempe, Arizona, for development of a mixed-use (including residential and other uses) project (the “**Project**”). On September 21, 2000, the City Council approved Resolution No. 2000.62 selecting United Properties LLC as prime developer for the Project. College Block LLC has been created by United Properties LLC as successor of all rights and responsibilities under this Agreement;

D. WHEREAS, the City Council approved an extension to the exclusive negotiation period effective through December 1, 2003;

E. WHEREAS, the City hereby intends to and does grant Developer exclusive development rights within the Property and for the Project upon the terms and conditions set forth in the Agreement in accordance with the Developer’s RFP response;

F. WHEREAS, the Parties intend, and the objective of this Agreement is to achieve, the development of the Property in furtherance of the goals of the Redevelopment Plan;

G. WHEREAS, the development and redevelopment contemplated in and required by this Agreement will result in improvements to, and new uses of, portions of the Redevelopment Area and Property and certain adjacent properties and will benefit the City and the public in general. This Agreement is consistent with, and will further the redevelopment goals of, the Slum Clearance and Redevelopment Act of the State of Arizona, A.R.S. §§36-1471, et. seq. (the “**Act**”) and the Redevelopment Plan. Without limiting the foregoing, the City acknowledges that it will, directly or indirectly, realize substantial tangible and intangible benefits from Developer’s performance of its obligations under this Agreement, including, but not limited to, the redevelopment of a key area within the City, increased tax revenues, increased opportunities for employment within the City, increased tourism, facilitation of the redevelopment of adjoining areas, and expansion and improvement of available public parking facilities within the City in general and the Redevelopment Area in particular;

H. WHEREAS, the City and the Developer understand and acknowledge that this Agreement is a “**Development Agreement**” within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05.

NOW, THEREFORE, in consideration of the forgoing and the mutual obligations of the parties hereto, the parties agree as set forth below:

ARTICLE I DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “ASU Property” shall mean and refer to that portion of the Property which is currently owned by Arizona Board of Regents/State of Arizona and legally described on **Exhibit B** attached hereto and incorporated herein by this reference.

1.2 “City” shall mean and refer to the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.3 “City Property” shall mean and refer to that portion of the Property which is a public alley right-of-way currently owned by the City and described on **Exhibit D** attached hereto and incorporated herein by this reference.

1.4 “Conceptual Development Plan” shall mean and refer to the development plan submitted by the Developer to the City as shown on **Exhibit F** and incorporated by this reference. The plan shows approximate building locations, which are subject to some degree of change during the approval process for the preliminary PAD and final PAD

1.5 “Developer” shall mean and refer to College Block, LLC, an Arizona limited liability company, and its successors and assigns.

1.6 “Final PAD” as defined in **Section 2.2** shall mean and refer to a Final Plan of Development which is approved by the City with respect to the development of a single parcel or group of parcels within the Property in one or more phases, and which sets forth the specific uses, densities, features and other development matters with respect to the Property.

1.7 “Improvements” shall mean and refer to all public and private improvements which may be constructed from time to time on or with respect to the Property or Project, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Developer or the City, as the case may be, pursuant to the terms of this Agreement.

1.8 “Parcel” shall mean and refer to a specific portion of the Property, which may be all or a portion of the City Property, the ASU Property and/or Private Property.

1.9 “Phase” shall mean and refer to a specific portion of the Project to be developed by Developer separate and apart, and potentially at a different time, than other portions of the Project, including, but not limited to one or more residential phases and one or more commercial phases. Developer and City acknowledge Phases may be utilized by Developer for various purposes, including, but not limited to: adapting the Project (whether through phasing or revision of the Project) to those Parcels of the Property which the Developer is able to acquire (in order to afford Developer to best use its available resources, and to coordinate such uses and resources with the market, in order to assure a timely, efficient and cost-effective development and sale of the Project.

1.10 “Private Property” shall mean and refer to that portion of the Property which is currently owned by third parties, other than the City Alley or ASU Property, and legally described on **Exhibit C** attached hereto and incorporated herein by this reference.

1.11 “Preliminary PAD” as defined in **Section 2.2** shall mean and refer to that Preliminary Plan of Development for all or a portion of the Property and Project as from time to time approved by the City, which Preliminary PAD sets forth specific uses, densities, features and other development matters with respect to the Property and Project.

1.12 “Project” shall mean and refer to the development of the Property pursuant to this Agreement, for the purposes and uses described in the Conceptual Development Plan.

1.13 “Property” shall mean and refer to all of the real property which is legally described on **Exhibit A** attached hereto and incorporated herein by this reference, and which consists of the City Alley, ASU Property and Private Property.

1.14 “Schedule of Performance” shall mean and refer to that Schedule of Performance agreed to by the City and the Developer as set forth on **Exhibit E** attached hereto and incorporated herein by this reference.

ARTICLE II DEVELOPMENT PLAN

2.1 Duration of Development Agreement. The term of this Agreement shall continue and exist from the effective date of this agreement until a "Certificate of Completion" for development of the Property is issued by the City, unless sooner cancelled as provided in **Sections 7.1 through 7.4.**

2.2 Scope of Development. Concurrently with the approval and execution of this Agreement, the City Council has approved the Conceptual Development Plan prepared by the Developer as the Scope of Development. The Conceptual Development Plan sets forth the basic land uses, the intensity and density of such uses, the relative height, bulk and size of the buildings and structures on the Project Site. The relative location of such buildings, structures and uses will be further refined and finally approved in the Preliminary PAD and Final PAD process pursuant to Tempe Zoning Ordinance No. 808. City and Developer acknowledge the Conceptual Development Plan and Scope of Development may change due to the inability of Developer to acquire portions of the Property as contemplated by this Agreement. City and Developer agree that provided the concept (including uses and needs of the community served by the Project) remain consistent, Developer may proceed with a revised development plan and Scope of Development.

2.3 Duration of Development Agreement. This Agreement shall be effective from the date executed until all provisions contained in the Schedule of Performance have been completed, unless sooner terminated in accordance with **Sections 7.1 through 7.4.** Upon any termination of this Agreement, City or Developer shall each, upon request of the other, execute any notice of termination (or equivalent document) reasonably requested by the other to evidence such termination for recordation purposes.

2.4 Schedule of Performance. The City and the Developer intend that the planning and development of the Property shall be achieved pursuant to the Schedule of Performance attached hereto as **Exhibit E.** The Developer and the City shall each use their diligent and good faith efforts to ensure that development of the Property into the Project occurs in accordance with the Schedule of Performance.

2.5 Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement or in the Schedule of Performance in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the non-breaching party shall have their respective remedies set forth in this Agreement.

2.6 Approvals. The City hereby agrees that, in connection with all such approval requests relating to the development of the Project and the construction of any Improvements, City agrees that no extraordinary plan or review requirements will be imposed on Developer, the Property or Project.

2.7 Integration of RFP and Developer Response. By reference herein, the parties integrate and incorporate into this Agreement, the RFP dated February 18, 2000 and Developer's response dated August 21, 2000, which the parties acknowledge include, among other things, the anticipated scale and densities of the Project, subject to modification as provided herein (including but not limited to modification due to inability of Developer to acquire some or all of the Parcels). In the event of any conflict between this Agreement and the RFP dated February 18, 2000 and/or the Developer's response dated August 21, 2000, the terms and provisions of this Agreement shall govern and control.

2.8 Phasing of Project. Due to the various factors which may influence Developer's development of the Project, including but not limited to the inability of Developer to acquire all of the Property, or availability of financing or market conditions, Developer shall have the right, subject to the Schedule of Performance and terms of this agreement, to proceed with development of the Project (in the form approved by the City pursuant to the Final PAD) in phases; however, Developer shall not have the right to so proceed with development of the Project if either: (a) that portion of the Property which Developer is able to acquire is less than one (1) acre; or (b) the building(s) included in the initial phase of the Project will contain less than 75,000 square feet of gross building area.

2.9 Development Incentives. The parties acknowledge that the development of the Project, or any phase thereof, may be economically feasible only by the commitment of the City to provide the Developer with the benefit of additional Development Incentives (the "**Development Incentives**") which could potentially include, but not be limited to, sales tax rebate of the City's share of construction sales and excise sales taxes generated by the project. Developer acknowledges and agrees that City is not obligated by this agreement to provide Developer any Development Incentives, herein defined or otherwise, and that Developer is subject to the terms of this Agreement, including the Schedule Performance, regardless of whether City provides or does not provide any further incentives or Development Incentives pursuant to a written amendment to this agreement or through a separate agreement between the parties. The City may, without any obligation created by this agreement, also provide the Developer, as a Development Incentive, with the benefit of all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209. The exact amount and scope of potential future Development Incentives provided by the City would be contingent upon Developer's demonstrated need identified through a proforma analysis. Developer acknowledges and agrees that any future incentives or Development Incentives provided by the City would be subject to further City approval of a written amendment to this agreement or through separate agreement between the parties and that this agreement does not create any obligation for the City to provide any further incentives or Development Incentives.

ARTICLE III

ACQUISITION OF PROPERTY

3.1 Acquisition of Property. As of the date of this Agreement, Developer does not own fee title to the Property. Acquisition of the Property shall be the sole responsibility of the Developer.

3.2 Conveyance of City Alley. Upon approval of the Preliminary PAD and acquisition of title by the Developer of all or part of the Property as described in **Exhibit A** to the extent that Developer complies with the Schedule of Performance and the terms of **Section 2.8**, the Developer may request and the City shall abandon portions of the East-west alley right-of-way shown as “**City Alley**” on **Exhibit D**. Alley abandonment shall coincide with those portions of the alley adjacent to any Parcel then owned by the Developer, subject to proper notice and action by the City Council.

ARTICLE IV

PARKING/UTILITIES EASEMENTS FROM CITY

4.1 Conveyance of Easement to Developer. Subject to all terms, covenants and conditions of this Agreement and the showing of necessity pursuant to a Final PAD, the City agrees to convey by separate official action(s) to Developer perpetual easements (the “**Parking/Utilities Easements**”) under the street rights-of-way of Sixth Street and Seventh Street contiguous to the Property within the Project for which Developer has title for the following purposes: (i) the construction, occupancy, operation and maintenance of subsurface parking facilities, which must comply with all applicable zoning and building codes, and (ii) the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of lines or systems for utilities that service the new buildings or adjacent properties. The City has no obligation to install, repair maintain, relocate or remove any utilities arising out of the execution or use of these easements. The Parking/Utilities Easements will run with the title to the Property within the Project, or one or more specific Condominium Project(s) as Developer may designate within the Project subject to approval of the City. The City also agrees to convey to Developer and its respective contractors, materialmen and laborers a construction easement and an access easement for access and passage over and across Sixth Street and Seventh Street contiguous to the Property within the Project as shall be necessary for Developer to construct improvements within the Parking/Utilities Easements and to maintain the Parking/Utilities Easements.

4.1.1. Term. During the effective term of the Parking/Utilities Easements, the party benefited by the Parking/Utilities Easements, at its own expense shall maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure such party and the City against liability for injury to persons and property and for the death of any person occurring in on or about the Parking/Utilities Easements. The limits of such insurance shall not be less than

\$2,000,000 for the death or injury of any one person, nor less than \$5,000,000 for any one accident, nor less than \$2,000,000 for property damage. Said insurance limits shall be periodically adjusted to maintain limits equivalent to these initial limits throughout the effective term of the easement. Said insurance shall be primary to the City's self-insurance.

4.1.2. Insurance. The party benefited by the Parking/Utilities Easements shall provide the City with duplicates of insurance policies maintained by such party pursuant to this Agreement, or certificates of insurance relating thereto issued by the insurers. In the event such party shall fail to maintain or renew any insurance policy required under this Agreement, or to pay the premiums therefore, the City and/or any mortgagee of structures or improvements within the easement may, with thirty (30) day written notice to such party, at their respective options but without obligation to do so, procure such insurance or pay such premiums, and any sums expended therefore shall be repaid by such party to the party expending the same upon demand, together with interest thereon at the rate of two percent (2%) above "prime interest rate" charged by Bank One, or its successor, at the date of the payment until repaid by such party.

The party benefited by the Parking/Utilities Easements shall obtain the agreement of each insurance company in which a policy required by the Agreement is carried that such policy shall not be canceled or terminated without thirty (30) days prior written notice to the City and to the mortgagee of any mortgage covering the easement.

4.1.3 Recordation of Easement. The City shall execute separate from this Agreement and pursuant to separate official action(s), the documents creating the above stated Parking/Utilities Easements for recording purposes. Said documents shall be executed and recorded, upon request of Developer, prior to the issuance of building permits for the construction of any building or improvement of the subject Property within the Project.

ARTICLE V INDEMNIFICATION

5.1 Liability and Indemnification. The Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense, arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by the Developer.

ARTICLE VI

SUB-AGREEMENTS

6.1 Subordinate Development Agreements. The City and Developer hereby acknowledge that the development of the Project may be accomplished by Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property ("**Other Developers**"). In connection therewith, it is anticipated and contemplated by the parties that such Other Developers may desire to negotiate and enter into separate and subordinate development agreements with the City and/or Developer with respect to various matters relating to the Project (including Phases thereof), including, but not limited to infrastructure Improvements, uses, plan approvals and other similar matters ("**Subordinate Agreements**"). The parties hereby agree that any and all Subordinate Agreements entered into with any such Other Developers shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such Subordinate Agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

ARTICLE VII

DEFAULT; REMEDIES; TERMINATION

7.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by such party within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance attached hereto and incorporated herein as **Exhibit E**, and such breach or default continues for a period of ninety (90) days after written notice thereof from the non-defaulting party to the defaulting party.

7.2 Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefor as set forth in **Section 6.1** above, then, in that event, the Developer shall have the right to: (a) terminate this Agreement upon written notice delivered to the City; or (b) exercise any other rights or remedies allowed by applicable law.

7.3 City's Remedies. In the event that Developer is in breach under this Agreement by failing to develop the Property in accordance with the Schedule of Performance and Developer thereafter fails to cure any such breach within the time period described in **Section 7.1** above, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer, and, if such default occurs subsequent to the abandonment of the City Alley, City shall have the right to reclaim the City Alley so long as: (a) the City Alley has not already been incorporated into a portion of the Project completed or under construction by Developer; or (b) the Developer has not yet obtained a financial loan secured by the City Alley, [or a Parcel adjacent to and incorporating the City Alley in development of that Parcel, for the purpose of the construction of Improvements.

7.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the property pursuant to this Development Agreement.

ARTICLE VIII

CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the provisions of A.R.S. § 38-511.

8.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any of its successors or assignees: (a) in the event of any default or breach by the City; (b) for any amount which may become due to the Developer or its successors or assigns; or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE IX

ASSIGNMENT OF INTEREST

9.1 Assignment. This Agreement may not be assigned by the Developer without the written consent of the City and may only be assigned to a: (a) a parent, subsidiary, division or member of Developer, or (b) an entity in which Developer is a principal with a controlling interest. No transfer to such assignee shall be binding upon the City unless such assignee shall deliver to City a recordable instrument which contains a covenant of assumption by the assignee of the obligations of Developer under this Agreement, but the failure or refusal to deliver such instrument shall not release or discharge the assignee from its obligations hereunder.

ARTICLE X

SPECIAL PROJECT PROVISIONS

10.1 Utilities. City represents and covenants that: (a) water and sanitary sewer capacity, available for connection to and sufficient to service the Project, are located within public rights-of-way adjacent to the Property; and (b) the Project will receive services generally provided by the City, including but not limited to water and sanitary sewer, refuse collection, fire protection and police protection, without cost or requirement other than as generally charged, including special assessment or improvement district, to or required by the City.

10.2 Bus Pull-Outs. Upon completion of the City's planned transit center, the City shall use its diligent and good faith efforts to remove or relocate, to other locations not on or involving the Property within the Project, any and all bus facilities from College Avenue adjacent to the Property.

ARTICLE XI

NOTICES

11.1 All Notices which shall or may be given pursuant to this Agreement shall be in writing by personal service or transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Developer: College Block, LLC
5090 North 40th Street, Suite 190
Phoenix, Arizona 85018
Attention: Randall Paul

and: Eli Setton
6532 E. Aster Drive
Scottsdale, AZ 85254

With a Copy to: Mark Dioguardi.
Tiffany & Bosco
2525 E Camelback Road
3rd Floor, Tower II
Phoenix, AZ 85016-4237

To the City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to: City Attorney
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

Either party may designate any other address for purpose of notices by written notice to the other party in the manner described herein.

ARTICLE XII

GENERAL PROVISIONS

12.1 Cooperation. The City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use their respective diligent and good faith

efforts to pursue the economic development of the Property into the Project as contemplated by this Agreement.

12.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial real estate development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may order. The results of the mediation shall be non-binding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

12.4 Successors and Assigns. This Agreement shall run with the land of the properties owned by Developer, and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

12.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

12.6 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

12.7 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

12.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

12.9 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

12.10 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property into the Project, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

"CITY"

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

APPROVED AS TO FORM:

By _____
Neil Giuliano, Mayor

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2003, before me, the undersigned officer, personally appeared Neil Giuliano, who acknowledged himself to be Mayor of the CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

“DEVELOPER”

COLLEGE BLOCK, LLC, an Arizona limited liability company

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2003, before me, the undersigned officer, personally appeared _____ who acknowledged him/herself to be the _____ of COLLEGE BLOCK, LLC, an Arizona limited liability company, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

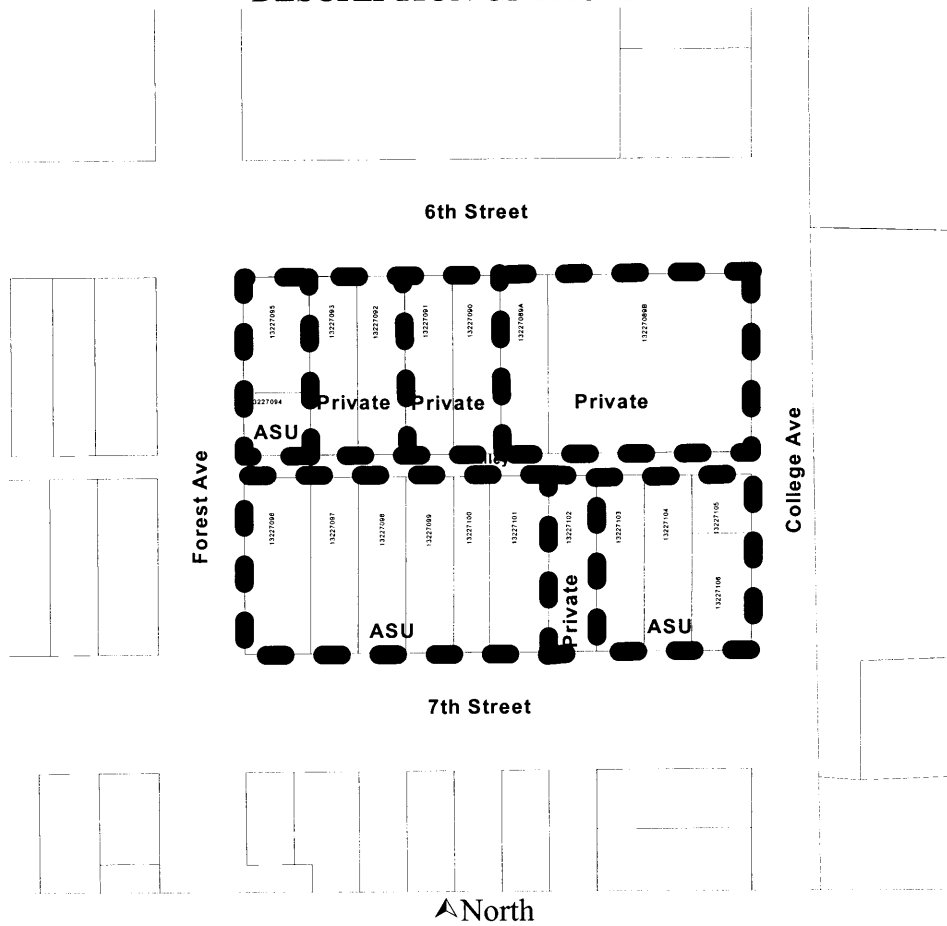
NOTARY SEAL:

Notary Public

LIST OF EXHIBITS

- Exhibit A* - *Description of Property*
- Exhibit B* - *Description of ASU Property*
- Exhibit C* - *Description of Private Property*
- Exhibit D* - *Alley Diagram*
- Exhibit E* - *Schedule of Performance*
- Exhibit F* - *Conceptual Development Plan*

EXHIBIT A DESCRIPTION OF PROPERTY



LEGAL DESCRIPTION:

Assessor's Number 132 27 089B
Tempe Block 12 Lots 1,2,3,4.

Assessor's Number 132 27 089A
Tempe Block 12 Lot 5.

Assessor's Number 132 27 090
Tempe Block 12 Lot 6.

Assessor's Number 132 27 091
Tempe Block 12 Lot 7.

Assessor's Number 132 27 092
Tempe Block 12 Lot 8

Assessor's Number 132 27 093
Tempe Block 12 Lot 9

Assessor's Number 132 27 094
Tempe Block 12 Lot 10, Except the North 97 Feet

Assessor's Number 132 27 095
Tempe Block 12 Lot 10, Except the South 53 Feet

Assessor's Number 132 27 096
Tempe Block 12 Lot 11

Assessor's Number 132 27 097
Tempe Block 12 Lot 12

Assessor's Number 132 27 098
Tempe Block 12 Lot 13

Assessor's Number 132 27 099
Tempe Block 12 Lot 14

Assessor's Number 132 27 100
Tempe Block 12 Lot 15, Except the East 10 Feet

Assessor's Number 132 27 101
Tempe Block 12 Lot 16, and the East 10 Feet of Lot 15

Assessor's Number 132 27 102
Tempe Block 12 Lot 17

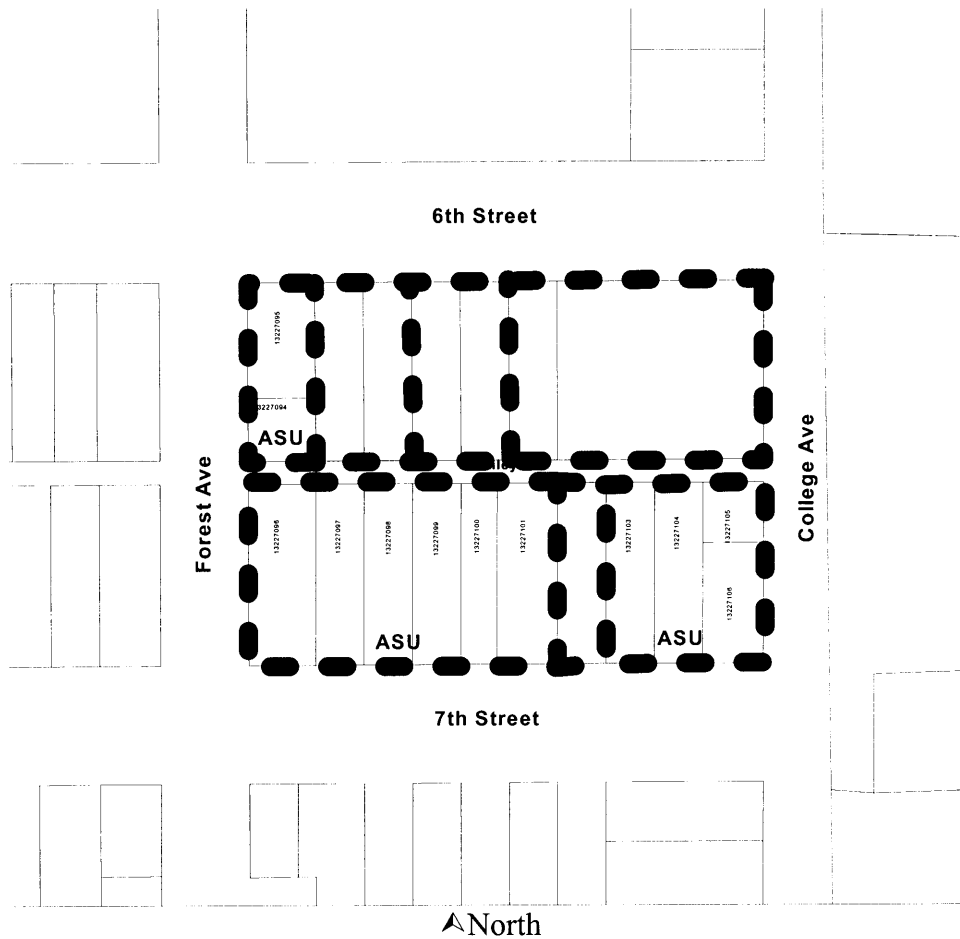
Assessor's Number 132 27 103
Tempe Block 12 Lot 18

Assessor's Number 132 27 104
Tempe Block 12 Lot 19

Assessor's Number 132 27 105
Tempe Block 12 Lot 15, Except the South 100 Feet

Assessor's Number 132 27 106
Tempe Block 12 Lot 15, Except the North 50 Feet

**EXHIBIT B
DESCRIPTION OF ASU PROPERTY**



LEGAL DESCRIPTION:

Assessor's Number 132 27 094
Tempe Block 12 Lot 10, Except the North 97 Feet

Assessor's Number 132 27 095
Tempe Block 12 Lot 10, Except the South 53 Feet

Assessor's Number 132 27 096
Tempe Block 12 Lot 11

Assessor's Number 132 27 097
Tempe Block 12 Lot 12

Assessor's Number 132 27 098
Tempe Block 12 Lot 13

Assessor's Number 132 27 099
Tempe Block 12 Lot 14

Assessor's Number 132 27 100
Tempe Block 12 Lot 15, Except the East 10 Feet

Assessor's Number 132 27 101
Tempe Block 12 Lot 16, and the East 10 Feet of Lot 15

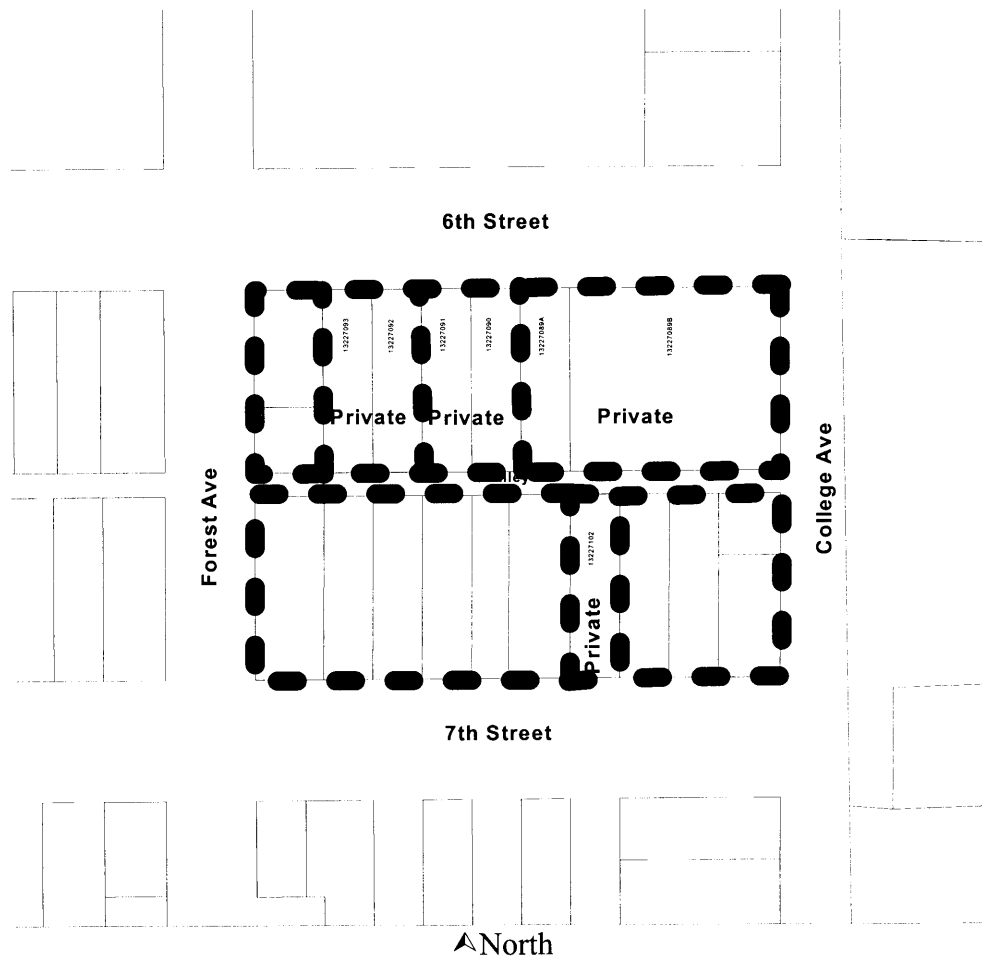
Assessor's Number 132 27 103
Tempe Block 12 Lot 18

Assessor's Number 132 27 104
Tempe Block 12 Lot 19

Assessor's Number 132 27 105
Tempe Block 12 Lot 15, Except the South 100 Feet

Assessor's Number 132 27 106
Tempe Block 12 Lot 15, Except the North 50 Feet

EXHIBIT C
DESCRIPTION OF PRIVATE PROPERTY



LEGAL DESCRIPTION:

Assessor's Number 132 27 089B
Tempe Block 12 Lots 1,2,3,4.

Assessor's Number 132 27 089A
Tempe Block 12 Lot 5.

Assessor's Number 132 27 090
Tempe Block 12 Lot 6.

Assessor's Number 132 27 091
Tempe Block 12 Lot 7.

Assessor's Number 132 27 092
Tempe Block 12 Lot 8

Assessor's Number 132 27 093
Tempe Block 12 Lot 9

Assessor's Number 132 27 102
Tempe Block 12 Lot 17

**EXHIBIT D
ALLEY DIAGRAM**

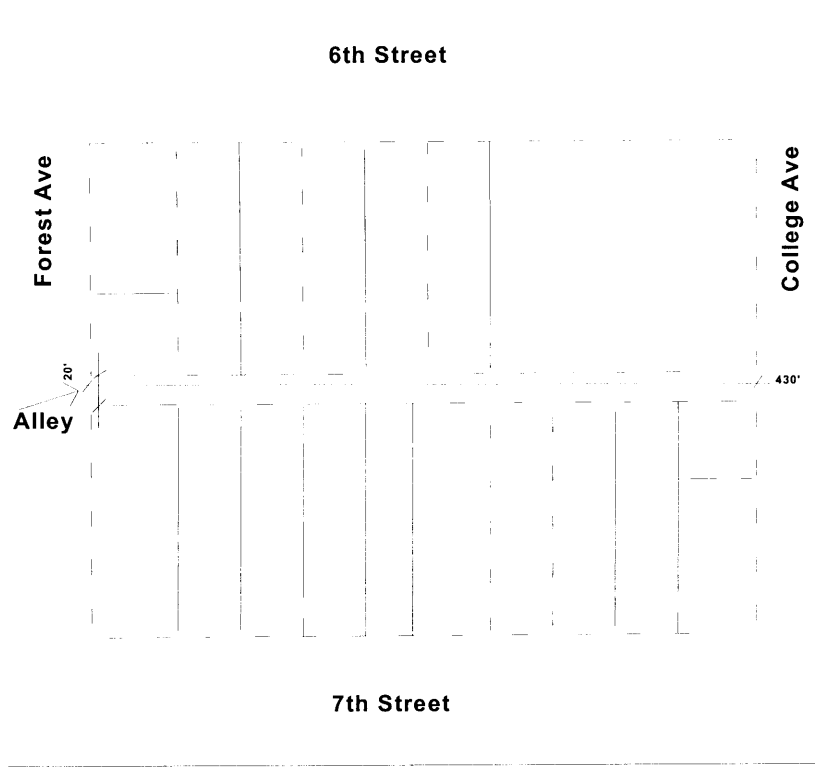
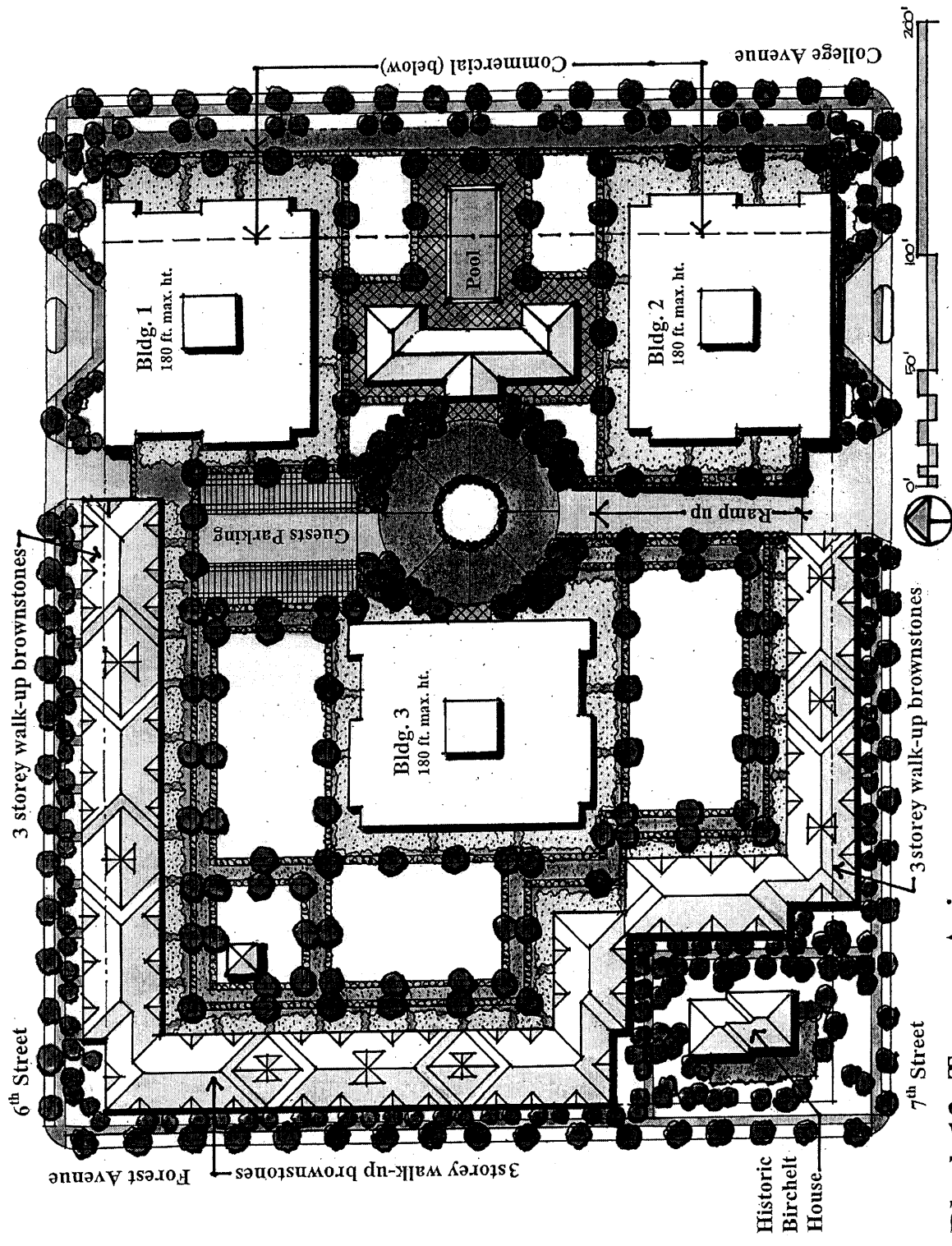


EXHIBIT E

SCHEDULE OF PERFORMANCE

ACTION:**ON OR BEFORE:**

Initial Phase to have ASU and Private Property under contract	150 days after parties' signature of this agreement.
Submit Preliminary PAD Application	The earlier of either: (1) 90 days after Developer having title to all of the Property or (2) 240 days after parties' signatures to this agreement.
Commence Construction of Phase I.	21 months after parties' signature of this agreement
Complete all land acquisition	48 months after parties' signature of this agreement.
Terminate Agreement	December 31, 2008.



Block 12, Tempe, Arizona

Exhibit 'F' Conceptual Site Plan